



# THE UPR PROJECT AT BCU

## Submitted by:

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## About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and in international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights.

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## INTRODUCTION

1. The Republic of the Union of Myanmar is party to four of the nine core international human rights treaties.<sup>i</sup> The government ratified the Convention on the Rights of the Child (CRC)<sup>ii</sup> on 15 July 1991, the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)<sup>iii</sup> on 22 July 1997, and the Convention on the Rights of Persons with Disabilities (CERD)<sup>iv</sup> on 7 December 2011. In the National Report for the Second Cycle of Myanmar's UPR<sup>v</sup> it affirmed that the *Pyidaungsu Hluttaw* (Parliamentary Assembly of the Union) was in the process of ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>vi</sup> which occurred on 6 October 2017.
2. This Stakeholder Report recommends that Myanmar makes comparable positive commitments in the Third Cycle of the UPR, this time for the ratification of the International Covenant on Civil and Political Rights (ICCPR)<sup>vii</sup> and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.<sup>viii</sup> To facilitate this legislative process we call for the initiation of an official moratorium on the death penalty, as a step toward domestic *de jure* abolition, and following this to take the commendable decision to contribute to the worldwide efforts to abolish the punishment.

### **A. Myanmar and International Law on the Death Penalty**

#### *Myanmar's Capital Judicial Process*

3. The death penalty was created through the colonial legislation of the Penal Code (1860), the Evidence Act (1872), and the Code of Criminal Procedure (1898).<sup>ix</sup> The capital trial process, and appellate review, operated through the common law<sup>x</sup> with hanging being the proscribed method of execution.<sup>xi</sup> A death sentence passed by a trial court must be confirmed by the Supreme Court.<sup>xii</sup> However, the full implementation of this capital judicial process has been suspended as, whilst death sentences are still handed down, no executions have occurred since 1988.<sup>xiii</sup> Reflective of this circumstance, under s. 204 of the Constitution of the Republic of the Union of Myanmar (2008), President U Thein Sein presented Order No. 2/2016 to grant a pardon and replace all death sentences with life imprisonment.<sup>xiv</sup> This *de facto* abolitionist position has been maintained by President U Htin Kyaw (2016-2018) and President U Win Myint (2018-present).<sup>xv</sup>

#### *International Law Promoting the Restriction and Abolition of the Death Penalty*

4. The United Nations has created a sophisticated framework for scrutinising the death penalty under ICCPR Article 6, which protects the right to life, Article 7 which prohibits torture and inhumane punishment, and Article 14 which provides for the right to a fair trial.<sup>xvi</sup> The Second Optional Protocol to the ICCPR rendered an opportunity to galvanise State abolition,<sup>xvii</sup> and the ECOSOC Safeguards Guaranteeing Protection of the Rights of

Those Facing the Death Penalty provide enhanced procedural, trial, and appellate protections for capital defendants.<sup>xviii</sup>

5. This corpus of legal protection contributes to the abolitionist initiatives in the General Assembly,<sup>xix</sup> the Special Procedures mechanism of the UN Human Rights Council including the Country Mandates<sup>xx</sup> and Thematic Mandates of the various Special Rapporteurs and Working Groups,<sup>xxi</sup> the quinquennial reporting to the Secretary General,<sup>xxii</sup> the Secretary General's Question on the Death Penalty,<sup>xxiii</sup> Human Rights Committee decisions,<sup>xxiv</sup> and the Universal Periodic Review of every member state of the United Nations.<sup>xxv</sup>
6. This intricate UN machinery was reflected in the Human Rights Council on 4 March 2015, during the high-level panel which, "exchange[d] views on the questions of the death penalty, and [addressed] regional efforts aiming at...abolition."<sup>xxvi</sup> Mr. Joachim Rucker, President of the Human Rights Council, noticed the, "major achievement,"<sup>xxvii</sup> that a significant majority of countries around the world had, "either abolished the death penalty, introduced a moratorium or did not practice it."<sup>xxviii</sup> Ms. Ruth Dreifuss, former President of the Swiss Confederation, affirmed, "humanity had made considerable advances towards the universal abolition of the death penalty."<sup>xxix</sup> The panel concluded that in considering each of the human rights regions it is, "possible to move gradually towards abolition through dialogue and advocacy," and this is because the death penalty is, "not about any particular culture or any religion."<sup>xxx</sup> Abolition of the death penalty is therefore a universal ideal.
7. Reflecting this abolitionist focus, the General Comment on the Right to Life<sup>xxxi</sup> provides an interpretive methodology on the death penalty, and concerning ICCPR Article 6(6), which states, "[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment," it:

reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable [...] and necessary for the enhancement of human dignity and progressive development of human rights.<sup>xxxii</sup>
8. Article 6(6) provides a time-limiting mechanism that is designed to neutralise the ability of Member States to perpetually claim domestic legitimacy for the continued use of the death penalty. This is, therefore, reflected in the growing international consensus against capital punishment.<sup>xxxiii</sup>

*Myanmar and the UNGA Resolution on the moratorium on the use of the death penalty*

9. Myanmar has evolved its position within the biennial vote of the United Nations General Assembly's Resolution on a moratorium on the use of the death penalty. In the four UNGA Resolution votes from 2007 to 2012, Myanmar voted "against" the resolution.<sup>xxxiv</sup> Then, during the three votes from 2014 to 2018, Myanmar "abstained."<sup>xxxv</sup> This change in vote occurred in 2014 and so this political perspective was not affirming the inclusion of the "sovereignty clause" in paragraph 1 of the 2016 resolution.<sup>xxxvi</sup>
10. Myanmar was a signatory to the Joint Permanent Missions' *note verbale* of dissociation on 11 January 2008, which recorded an objection to the Secretary General of the United Nations on the attempt to create a global moratorium.<sup>xxxvii</sup> The government supported the subsequent *notes verbales* led by the Permanent Representative of Egypt in 2009,<sup>xxxviii</sup> 2011<sup>xxxix</sup> and 2013.<sup>xl</sup> A year before the 2016 resolution, however, Myanmar did not sign the *note verbale* led by Egypt in 2015,<sup>xli</sup> and then the government continued to withhold its support in 2017,<sup>xlii</sup> and most recently in 2019.<sup>xliii</sup>
11. Thus, Myanmar has demonstrated a commendable shift in both abstaining from the vote on the UNGA Resolution, and also in withdrawing support of the *note verbale* of dissociation. The government now has the opportunity to take the next step to affirm the usefulness of the Resolution for the global solidification of the anti-death penalty position.

*Myanmar's Statement on the Death Penalty in the UPR National Reports (First and Second Cycle)*

12. Myanmar's submission in the previous two UPR cycles further demonstrates a shift away from fully endorsing the retentionist position.
13. Myanmar's statement in the National Report for the First Cycle of the UPR, enumerated the outmoded position that the capital judicial process is still reflective of acceptable international norms, as "[a]lthough the death penalty is imposed in accordance with the law, Myanmar never carries out the death penalty since 1988."<sup>xliv</sup> Then in the Second Cycle of the UPR a significant concession was provided of the value of international human rights to inform the legitimacy of national criminal justice policies. Although Myanmar conducts its, "criminal justice system independently," the government stated, "as and when appropriate, it always takes international norms and standards into careful consideration."<sup>xlv</sup>
14. This is a welcomed change of language which can provide the political and legal opportunities for Myanmar to align itself with the evolved international position against the death penalty.

## **B. Implementation of Recommendations from Cycle Two in 2015**

15. Myanmar received 281 recommendations in the Second Cycle of which 124 were accepted and 69 were noted.<sup>xlvi</sup>
16. Thirteen recommendations focused on the death penalty and were provided by twelve countries, and the Holy See (the jurisdiction of the Bishop of Rome in The Vatican City). Myanmar “supported” two and “noted” eleven. There were also eleven recommendations for Myanmar to complete the ratification of the nine core international human rights treaties, which consequently would provide further opportunities to denounce the death penalty.
17. The Working Group Report noted Myanmar’s observation on the history and current status of the Union’s capital judicial process:

Myanmar had inherited the common-law system, and the death penalty was prescribed under the law. However, it could only be carried out pursuant to a final judgment by the Supreme Court. It had not been carried out since 1988. Offenders who were below the age of 16 at the time of the commission of the crime were not to be sentenced to capital punishment.<sup>xlvii</sup>
18. This provided the interpretive lens from which Myanmar proceeded to engage with the Second Cycle of the UPR recommendations on the death penalty.

### *Recommendations Concerning De Jure Abolition*

19. Three recommendations focused on *de jure* abolition. **Panama** (para. 143.64) called for Myanmar to “consider” this domestic legal change and **Portugal** (para. 144.57) recommended actionable abolition “in all cases and circumstances.” The **Holy See** (joined by **Poland, Slovenia, and Spain**) (para. 144.56) recommended that Myanmar “[a]bolish the death penalty.” Myanmar “supported” **Panama’s** recommendation and “noted” those of **Portugal** and the **Holy See**. The consequence of this is that a process for immediate domestic legal change was not accepted.

### *Recommendations Concerning an Official Moratorium on the Death Penalty*

20. Seven recommendations called for Myanmar to adopt an official moratorium on the death penalty. All identified that a moratorium would be an initial policy step towards domestic abolition. **Australia** (para. 144.62), **Croatia** (para. 144.63), **France** (para. 144.61), **Luxembourg** (para. 144.60), **Sierra Leone** (para. 144.58), and **Switzerland** (para. 144.59) identified that the moratorium should be initiated “with a view to” domestic abolition. **Lithuania** (para. 144.64) similarly stated that the moratorium would be “a first step” towards abolition. All of these recommendations did not enjoy support.

*Recommendations concerning Myanmar's Adoption of International Law*

21. **Namibia** (para. 143.6) recommended that Myanmar “consider” ratifying the ICCPR and the Second Optional Protocol, “with the view of total abolition of the death penalty.” Similarly, for the process, “aiming at the abolition of the death penalty,” **Greece** (para. 144.11) recommended acceding to the ICCPR and the Second Optional Protocol.
22. There were further recommendations by eleven member states concerning the complete ratification of the nine core international human rights treaties. These have been accepted in principle as part of an active review of the core international human rights treaties. The recommendations were provided by **Paraguay** (para. 144.1), **Latvia** (para. 144.2), **Germany** (para. 144.3), **Hungary** (para. 144.4), **Sierra Leone** (para. 144.5), **Slovenia** (para. 144.6), **Lithuania** (para. 144.8), **Spain** (para. 144.9), **Estonia** and **Ghana** (para. 144.10), **Greece**, (para. 144.11), **Switzerland** (para. 144.13), **Turkey** (para. 144.17), **Brazil** (para. 144.19), **Italy** (para. 144.20), and **Luxembourg** (para. 144.21). By implication, these would significantly contribute to Myanmar’s processes for the abolition of the death penalty, and enhance the opportunities for the country to engage with the removal of the punishment worldwide.

**C. Further Points for Myanmar to Consider**

*The Role of the Myanmar National Human Rights Commission*

23. Myanmar “supported” the recommendation from the **Republic of Korea** (para. 143.48) to, “[p]rovide all necessary assistance in order that the national human rights institution is able to operate at full capacity and continue judicial reforms.” The government has displayed a clear commitment to fulfilling this. In 2017, the Myanmar National Human Rights Commission, jointly organised with the Asia Pacific Forum on National Human Rights Institutions,<sup>xlviii</sup> a “Workshop on Consideration of a Moratorium on the Application of Death Penalty, pending its abolition,” in Nay Pyi Taw, 30-31 October 2017.<sup>xlix</sup> The Workshop was attended by all levels of government, and the Outcome Statement recommended adopting policies initiating:

A moratorium on the death penalty enables within domestic law:

1. The identification of effective alternative punishments.
2. Prevents misconceptions concerning a possible rise in crime rates.
3. Educates the public on the benefits of a more humane criminal justice system.
4. Enables the government to chart the next steps towards the domestic abolition of the death penalty.

A moratorium on the death penalty enables within the international arena:

1. Establishes the legal and political platform for the government to participate effectively in the international arena on the question of the death penalty.

2. Enables the government to contribute further to the moratorium of the death penalty in the Asia Pacific region.
3. Establishes the legal and political platform for the government to accede to the ICCPR.
4. While commending the government for the impending legislative provisions consistent with the CRC, the workshop recommends the prohibition of the death penalty on pregnant women, women with dependent children, for the elderly and for the persons with disabilities.<sup>1</sup>

24. This Outcome Statement was submitted to the government to consider the recommendations. This consideration is currently ongoing.

*Adopting the UPR Recommendations to Enable the People of Myanmar to Benefit from Advances in Effective Penology*

25. The right to benefit from scientific advancement should also apply to the progress in social science research on the death penalty. The Universal Declaration of Human Rights, Article 27, states, “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,”<sup>li</sup> and the ICESCR Article 15 (1)(b) recognises the right of everyone, “[t]o enjoy the benefits of scientific progress and its applications.”

26. Roger Hood and Carolyn Hoyle have produced the leading social science and criminological investigations into the death penalty worldwide and have concluded:

[t]hose who favour capital punishment ‘in principle’ have been faced with yet more convincing evidence of the abuses, discrimination, mistakes, and inhumanity that appear inevitably to accompany it in practice. Some of them have set out on the quest to find the key to a ‘perfect’ system in which no mistakes or injustices will occur. In our view, this quest is chimerical.<sup>lii</sup>

27. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,<sup>liii</sup> it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.<sup>liv</sup> Abolition in Myanmar would enable the people of the Union to benefit from the advancement of the leading social scientific research on punishment policies.

*The Universal Periodic Review Recommendations and the Contribution to the Sustainable Development Goals*

28. Myanmar should consider adopting the UPR recommendations in an expression of mutual reinforcement of the government’s commitment to promoting the Sustainable

Development Goals.<sup>lv</sup> The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.<sup>lvi</sup>

29. SDG 16 provides for “Strong Institutions and Access to Justice and Build Effective Institutions,” but the application of the death penalty is inconsistent with this goal.<sup>lvii</sup> Specifically, SDG 16.1, aims to reduce death rates, promote equal access to justice, and “protect fundamental freedoms,” and to further this, SDG 16.A.1 identifies the importance of independent national human rights institutions. Consistent with this goal the Myanmar National Human Rights Commission has been actively reviewing the human rights standards, and endorsed the adoption of a moratorium on the death penalty as a step toward abolition.
30. Abolition within Myanmar would be an important domestic legal change for reflecting strong national institutions in the Union. The use of the death penalty does not signal legitimate strength in institutions, but renders counterproductive and inhumane consequences, including a brutalising effect upon society. This does not facilitate strong institutional processes for the fostering of the human dignity of the people of Myanmar.

#### **D. Recommendations**

1. The government of Myanmar should support and implement the recommendations from the Second Cycle of the UPR:
  - a. to adopt an official moratorium on the death penalty;
  - b. amend national legislation to abolish the punishment in all circumstances; and,
  - c. ratify the International Covenant on Civil and Political Rights and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
2. To facilitate this process, the government should continue to endorse the recommendations on the importance of the role of the Myanmar National Human Rights Commission. It should implement the Outcome Statement of the Workshop on Consideration of a Moratorium on the Application of Death Penalty, pending its abolition, which is published on the NHRC’s website.<sup>lviii</sup>
3. It should support the next biennial vote on the UNGA Resolution on the moratorium on the use of the death penalty, and continue abstaining from any future *note verbale* on dissociation.
4. It should enhance support for the Asia Pacific Forum of National Human Rights Institutions in their important contribution to the regional abolition of the death penalty.
5. The government should use the acceptance of the UPR recommendations on the abolition of the death penalty, as also signalling Myanmar’s affirmation of the commitments to SDG 16 on strong institutions.

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<sup>i</sup> The core international treaties that Myanmar is yet to ratify are: the International Covenant on Civil and Political Rights, (1976) 999 UNTS 171; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 10 December 1984; the Convention for the Protection of All Persons from Enforced Disappearances, New York, 23 December 2010; the International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res 2106, 21 December 1965; and the International Convention on the Protection of the Rights of All Migrant Workers and members of Their Families, G.A. Res 45/158, 18 December 1990.

<sup>ii</sup> The Convention on the Rights of the Child, G.A. Res. 44/25, 20 November 1989. On 16 January 2012, Myanmar ratified the Optional Protocol on the Convention on the Right of the Child on the Sale of Child Pornography and Child Prostitution, G.A. Res. 54/263, 25 May 2000, and on 27 September 2019, it ratified the Optional Protocol on the Convention on the Right of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, 25 May 2000.

<sup>iii</sup> The Convention on the Elimination of All forms of Discrimination Against Women, New York, 18 December 1979.

<sup>iv</sup> The Convention on the Rights of Persons with Disabilities, New York, 13 December 2006.

<sup>v</sup> Myanmar, National Report Submitted to the Working Group of the Universal Periodic Review, Human Rights Council, Thirty-third Session, 2-13 November 2013, A/HRC/WG.6/23/MMR/1, 5<sup>th</sup> August 2015, para. 28, p. 5.

<sup>vi</sup> The International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) 16 December 1966.

<sup>vii</sup> The International Covenant on Civil and Political Rights, (1976) 999 UNTS 171.

<sup>viii</sup> The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. Res 44/128 15 December 1989.

<sup>ix</sup> For example, The Penal Code 1860, the death penalty shall be imposed under, s. 302 (murder), and it can be imposed for abating mutiny under s. 132 (abatement of mutiny); s. 194 (giving or fabricating false evidence with intent procure a criminal conviction); abetting in a suicide s. 305 (abatement of suicide of child or insane person); under s 396 (dacoity with murder); and the death penalty has been included in subsequent laws, for example, in the production, distribution and sale of illegal drugs under s. 20 of The Narcotic Drugs and Psychotropic Substances Law (1993); and for human trafficking under s. 29 of The Anti-Trafficking in Persons Law (2005), for the stealing or selling arms and ammunitions owned by the government, s. 2 of The Arms (Emergency Conviction) (Temporary Conviction) Act 1949; and for terrorist offences under s. 49 of The Counter-Terrorism Law (2014).

<sup>x</sup> Common law cases on the death penalty included, *Maung Aye Maung v. The Union of Burma*, (1956) B.L.R. (H.C) 273; *Maung Tin Swe and One v. The Union of Burma*, (1960) B.L.R. 125.

<sup>xi</sup> Hanging is proscribed under s. 368(1) of The Code of Criminal Procedure (1898).

<sup>xii</sup> Section 31(2) and 374 of The Code of Criminal Procedure (1898). Paragraph 765 of The Court's Manual vol. 1 4<sup>th</sup> Ed, (1999) affirmed that an appeal from a sentence of death must be brought to the Supreme Court within 7 days of the date of conviction, and in the Myanmar Jail Manual (1894) and reprinted in 1969, stated that when a capital convict is brought to prison a notification is provided that if they wish to appeal sentence, it must be lodged within 7 day, para. 631.

<sup>xiii</sup> On the 25<sup>th</sup> January 2016, in the Upper House, the Deputy Minister of the Ministry of Home Affairs, that although death sentences have been later imposed, no executions had occurred since 1988, this was reported on the 27<sup>th</sup> day at the 13<sup>th</sup> Regular Session at the First Amyotha Hluttaw (Upper House) convened on 25<sup>th</sup> January 2016, cited in U Soe Phone Myint, An Overview on the Legal Provisions, Myanmar Rulings and Precedent Relating to Death Penalty, presentation during the, Workshop on Abolition of the Death Penalty, Nay Pyi Taw, 30-31 October 2017.

<sup>xiv</sup> The granting of a pardon under the Constitution by the President:

Granting of a pardon

In honor of a Union Peace Conference and towards the peace of the Union, prevalence of law and order, and for national solidarity, and giving emphasis on humanitarian, if the death sentence had been passed before 12<sup>th</sup> Waxing of Pyatho, 1377 M.E (21<sup>st</sup> January 2016) on those prisoners in respect of any offence committed by them, a pardon is hereby granted under section 204, sub-section (a) of the Constitution and their death sentence is commuted to life imprisonment (unlimited period of years).

The Republic of the Union of Myanmar, The President's Office, Order no. 2/2016, 13<sup>th</sup> Waxing of Pyatho, 1377 M.E, (22<sup>nd</sup> January 2016), cited in, *ibid.* Under s. 401(1) of The Code of Criminal Procedure (1898), the President may at any time and without conditions suspend the execution or remit the sentence.

<sup>xv</sup> In 2017 the Asia Pacific Forum report on the death penalty state that there was at least 1 person on death row in Myanmar, see, The Asia Pacific Forum, *The Death Penalty: 1999-2016* (Asia Pacific Forum of National Human Rights Institutions: February 2017), p. 40.

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- <sup>xvi</sup> International Covenant on Civil and Political Rights (1976) 999 UNTS 171, Article 6 (right to life); Article 7 (the prohibition against torture and inhuman or degrading treatment or punishment); and Article 14 (the right to a fair trial and the principle of equality of arms).
- <sup>xvii</sup> The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, GA Res. 44/128, December 15, 1989.
- <sup>xviii</sup> See, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council Resolution, 1984/50; Additions to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as Agreed by the Economic and Social Council Resolution 1989/64; and the Strengthening of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as Agreed by the Economic Council Resolution 1996/15.
- <sup>xix</sup> For example, see the UNGA Resolution on the moratorium on the use of the death penalty, UNGA Res A/RES/73/170 (17 December 2018).
- <sup>xx</sup> For example, the Independent Expert on the human rights situation in Sudan <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/SDIndex.aspx>.
- <sup>xxi</sup> For example, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, <http://www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx>, and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.
- <sup>xxii</sup> ECOSOC Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty Report of the Secretary-General UN Doc E/2015/49 (13 April 2015).
- <sup>xxiii</sup> Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.
- <sup>xxiv</sup> For example, Judge v. Canada, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).
- <sup>xxv</sup> UPR Info, Database: Death Penalty <https://www.upr-info.org/database/>.
- <sup>xxvi</sup> High-level panel discussion on the question of the death penalty, Report of the United Nations High Commissioner for Human Rights, UNGA, A/HRC/30/21 (16 July 2015) p. 2
- <sup>xxvii</sup> Ibid.
- <sup>xxviii</sup> Ibid.
- <sup>xxix</sup> Ibid.
- <sup>xxx</sup> Ibid., p. 12.
- <sup>xxxi</sup> General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018.
- <sup>xxxii</sup> Ibid., para. 50, p. 12.
- <sup>xxxiii</sup> Amnesty International, stated, that at the end of 2018, more than two-thirds of the world's nations had "abolished the death penalty in law or practice," in, *Death Penalty in 2018: Facts and Figures*, (10 April 2019) <[www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/](http://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/)>.
- <sup>xxxiv</sup> Resolution on the Moratorium on the use of the death penalty UNGA Res. 62/149, 18 December 2007 *adopted by 104 votes to 54, with 29 abstentions*; UNGA Res. 63/168 18 December 2008, *adopted by 106 votes to 46, with 34 abstentions*; UNGA Res. 65/206 21 December 2010 *adopted by 109 votes to 41, with 35 abstentions*; UNGA Res. 67/176 20 December 2012, *adopted by 111 votes to 41, with 34 abstentions*.
- <sup>xxxv</sup> Resolution on the Moratorium on the use of the death penalty UNGA Res 69/186 18 December 2014 *adopted by 117 votes to 37, with 34 abstentions*; UNGA. Res. 71/187 19 December 2016 *adopted by 117 votes to 40, with 31 abstentions*; UNGA Res. 73/175 17 December 2018 *adopted by 121 votes to 35, with 32 abstentions*.
- <sup>xxxvi</sup> Resolution on the moratorium on the use of the death penalty, UNGA 71/187, 19 December 2016.
- <sup>xxxvii</sup> Note verbale dated 11 January 2008 from the Permanent Missions to the United Nations of Afghanistan and fifty-seven others, addressed to the Secretary general, A/62/658, 2 February 2008.
- <sup>xxxviii</sup> Note verbale dated 12 February 2009 from the Permanent Missions to the United Nations of Egypt, addressed to the Secretary general, A/63/716, 12 February 2009.
- <sup>xxxix</sup> Note verbale dated 11 March 2011 from the Permanent Missions to the United Nations of Egypt, addressed to the Secretary general, A/65/779, 11 March 2011.
- <sup>xl</sup> Note verbale date 16 April 2013 from the Permanent Missions to the United Nations of Egypt, addressed to the Secretary general, A/67/841, 16 April 2013.
- <sup>xli</sup> Note verbale dated 28 July 2015 from the Permanent Missions to the United Nations of Egypt, addressed to the Secretary general, A/69/993, 28 July 2015.
- <sup>xlii</sup> Note verbale dated 17 September 2017 from the Permanent Missions to the United Nations of Egypt addressed to the Secretary general, A/71/1047, 17 September 2017.

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- <sup>xliii</sup> Note verbale dated 16 September 2019 from the Permanent Missions to the United Nations of Egypt addressed to the Secretary general, A/71/1047, 16 September 2019.
- <sup>xliv</sup> Myanmar, National Report Submitted to the Working Group of the Universal Periodic Review, Human Rights Council, A/HRC/WG.6/10/MMR/1, 10 November 2011, para. 37.
- <sup>xliv</sup> Myanmar, National Report Submitted to the Working Group of the Universal Periodic Review, Human Rights Council, Thirty-third Session, 2-13 November 2013, A/HRC/WG.6/23/MMR/1, 5<sup>th</sup> August 2015, para. 169.
- <sup>xlvi</sup> Report of the Working Group on the Universal Periodic Review, Myanmar, Addendum, Human Rights Council, A/HRC/31/13/Add.1, 10 March 2016, para 3. Myanmar also considered a further 88 recommendations of which 11 were accepted, 30 in principle, 1 in part, and 42 were generally accepted, *ibid*, para 4.
- <sup>xlvii</sup> The Report of the Working Group on the Universal Periodic Review, Myanmar, A/HRC/31/13, 23 December 2015, para. 139, p. 12. It should be affirmed that in a fully operating capital judicial system, and death sentence of a person below the age of eighteen will be a violation of the ICCPR article 6(5) and the Convention on the Rights of the Child article 37.
- <sup>xlviii</sup> Commission Leads the Discussion on the Death Penalty, Asia Pacific Forum of National Human Rights Institutions, 2<sup>nd</sup> November 2017, <https://www.asiapacificforum.net/news/commission-leads-discussion-death-penalty-moratorium/>
- <sup>xlix</sup> Myanmar National Human Rights Commission, “Workshop on Consideration of a Moratorium on the Application of Death Penalty, pending its abolition,” Nay Pyi Taw, 30-31 October 2017, <http://www.mnhrc.org.mm/en/2017/11/dead/>
- <sup>l</sup> *Ibid*.
- <sup>li</sup> It is further recalled that the Human Rights Council determined that the basis of the Universal Periodic Review includes consideration of the Universal Declaration of Human Rights, see, Institution-building of the United Nations Human Rights Council, A/HRC/RES/5/1 18 June 2007.
- <sup>lii</sup> See, Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, 5<sup>th</sup> ed, (Oxford University Press, 2015), p. 7-8.
- <sup>liii</sup> John Rawls stated, “[a]t some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy,” in, *Political Liberalism*, (Columbia University Press, 2005), p. 248.
- <sup>liv</sup> Austin Sarat stated, “law cannot work its lethal will and ally itself with the killing state while remaining aloof and unstained by the deeds themselves,” in, *When the State Kills: Capital Punishment and the American Condition*, (Princeton University Press, 2001), p. 21.
- <sup>lv</sup> See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>
- <sup>lvi</sup> The first two cycles of the UPR were reviewed under a data mining procedure and of the circa. 50,000 recommendations, it was possible to link more than 50% of those to SDG targets, see, The Danish Institute for Human Rights, Linking the Universal Periodic Review to the SDGs, p. 2
- <sup>lvii</sup> Sustainable Development Goal 16, “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels,” <https://sustainabledevelopment.un.org/sdg16> 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all, and 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.
- <sup>lviii</sup> Outcome Statement of Workshop on Consideration of a Moratorium on the Application of Death Penalty, pending its abolition, Myanmar National Human Rights Commission, 1 November 2017, <http://www.mnhrc.org.mm/en/2017/11/dead/>